In the High Court of Judicature at Madras

Dated: 20/10/2003

Coram

The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.4417 of 1997

1.Abdul Jabbar
2.Sahar Banu ..... Petitioners

-Vs-

1. The Government of Tamil Nadu
by its Secretary
Revenue Department
Fort St.George
Madras.

2. The Tamilnadu Fisheries Department
by its Chairman
Greams Road,
Madra.6. ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari as stated therein.

For petitioner : Mr.K.Shahul Hameed

For respondents : Mr.V.S.Sethuraman
Spl.G.P.

:O R D E R

The writ petition is filed for quashing the G.O.Ms.No.215 dated 23.02.1995 passed by the Revenue Department, Government of Tamil Nadu, the first respondent herein.

2. The case of the petitioner herein is that the suit property is patta land and the petitioners have purchased the land on 31.01.1995 from Govindammal and seven persons. Before purchasing the said land, the petitioners wrote letters to the respondents on 07.10.1991 seeking information as to whether there is any proposal for acquisition of the land. The Special Deputy Collector, Land Acquisition Works, Madras City, Madras.5 replied on 06.01.1992 that the land in R.S.No.347/3, 4,5 and 6 and 3477/6, Tondiarpet village, Madras, is not covered by Land Acquisition under non-cooperation scheme. Similarly, the Slum Clearance Board, replied on 20.08.1990 that the land in R.S.No.3 478/3,4,5 and 6, and 3477/6, is not going

to be acquired for the Slum Clearance Board. But the second respondent did not reply to that letter. Even in the yer 1994, W.P.No.1842 of 1994 was filed by the owners of the land and the same was dismissed with some observation to the effect that the respondents are responsible and there is no doubt in the mind of the Court that they will encroach upon any private property unless they have proper authority to so te same. Thereafter, another writ petition inW.P.No.5743 of 1995 was filed praying for issuance of a writ of Mandamus forbearing the respondents from entering upon the land bearing R.S.No.3478/3 to 6 and 3477/6, Tondiarpet Villge, Madras and the writ petition was withdrawn by the petitioner therein (first petitioner in the present writ petition) Thereafter, the present G.O.No.215, Revenue Department, dated 23.02.1995 has been passed. In the G.O. It refers that it is a vacant land and there is a compound wall. The case of the petitioners is that the compound wall put up by them and the space is included within the compound wall. Therefore, the petitioners claim the property as their own property and hence, they want to quash the said Government Order.

3. In this writ petition, the respondents filed their counteraffidavit wherein they have stated that S.No.3477/6 of Tondiarpet Village measuring an extent of 2 cawnis, 12 grounds and 1348 sq.ft. was acquired in award No.2/57 by the Collector of Madras on behalf of the Fisheries Department and out of which 1 cawny 5 grounds and 0614 sq.ft. was transferred to the Revenue Department for the issue of patta to the fishermen in the locality. Most of the lands were transferred to the Revenue Department were encroached upon by the Fishermen Community people in this area. Subsequently, the vacant land measuring to an extent of 3 ground 1213 sq.ft. was transferred to the Fisheries Department as per G.O.Ms.No.215 Revenue Department, dated 23.02.1995. This land was sub-divided from the original S.No.3477/6 and assigned a new S.No.3477/143. Aggrieved by the said order, the petitioners have filed the present writ petition. It is further stated in the counter that the property bearing S.No.3478/3 to 6 and 3477/6 Tondiarpet Village has been acquired in Award No.2 of 1957 by the Collector of Chennai on behalf of the Fisheries Deaprtent. The entire land in S.No.3 477/6 was encroached upon by the Fishermen, and only an extent of 3 ground and 1213 sq.ft. Of land was only kept vacant for a long time. This land was surrounded by a compound wall and it was transferred to the Fisheries Department for the construction of community hall and hence, the writ petition is liable to be dismissed.

4. Mr.K.Alagirisamy, learned Senior Counsel appearing for the petitioners submitted that the property in surey Nos.3478/3 to 6 were never acquired and when it is stated in the counter that it was acquired, he wanted to clarify the same from the original file of Award 2 of 57 and accordingly Award 2 of 57 was summoned. A perusal of the award would show that it is dated 29.01.1955. By that R.S.No.3477/1, 3477 /6, 3618/1, 3618/3, 3618/4 and 3618/6 were taken possession of on 31.10.1955 and the land bearing R.S.No.3618/5 was taken possession on 12 .12.1955. Further, it is seen from the Award that compensation has also been awarded and further it is stated that R.S.No.3477/6 originally belonged to the late Rao Bahadur D.I.Jesudasan Pillai, father in law of Dr.P.V.Cherian, and thereafter it was divided among the joint owners. The petitioners do not claim the land through any of the persons mentioned in this award.

5. Further, the perusal of another Award 1 of 63 shows that

R.S.No.3478/3 alone was acquired. Only a very small portion was acquired for the purpose of laying a road. Therefore from the perusal of the original awards 2 of 57 and 1 of 63, it is clear that S.No.3478, 3 478/3 to 5 were never acquired, except a small portion in R.S.No.3478 /3 was acquired by award No.1 of 63. But at the same time, the impugned G.O.Ms.No.215 does not refer to survey No.3478 3,to 6 and from the Award 2/57 it is seen that the S.No.3477/6 was acquired by from late Rao Bahadur and in so far as this Government Order is concerned, the petitioner cannot claim to quash the impugned Government Order on the ground that it belongs to him. It is seen from the typed set of papers filed by the petitioners, the documents right from the year 1893 to 1940 and so on, they only referred to the land in S.No.34 78. Nowhere the S.No.3477 finds a place in these documents. Therefore, the petitioners have not proved any title of the predecessorsin-title with respect to this survey number.

6. On the contrary, the Government has acquired the land survey No.3477/6 as per the award 2/57. Therefore, in so far as this impugned Government Order is concerned, inasmuch as the land in S.No.3477 does not belong to the petitioners, the Government Order impugned herein cannot be quashed. According to award 2/57, the lands have been acquired by the Government and taken possession long back. Further document No.13 of 1948 which is a family settlement deed made on 21.12.194 7 survey NO.3477 is found but it referred to as boundary and not the property that was conveyed. This created confusion in the minds of the petitioners that S.No.3477 also belongs to them. In so far as R. s>no.3477/6 is concerned, it is the property of the Government as it was acquired by Award 2/57. The prayer to quash the impugned G.O. Has no basis inasmuch award 2/57 does not refer to this survey Number. With respect to this S.Nos.3478/3 to 6, the Government has no claimacquisition Therefore, the writ petition fails and hence liable to be dismissed.

In the result, the writ petition is dismissed. No costs.

Index : Yes
Internet : Yes

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To
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by its Secretary
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2. The Tamilnadu Fisheries Department
by its Chairman
Greams Road,
Madra.6.